

# AVIATION TECHNOLOGIES LTD.

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Aviation Technologies Ltd., "ATL" PRINCIPAL PLACE OF BUSINESS: TONOPAH AIRPORT, NYE COUNTY, NEVADA

**Robert Alan Kemp**

[ D/B/A: ]

## NEVADA CENTRAL RAILROAD

VIA - USPS and Emergency Fax Filing

(Monday), October 27, 2008

The Honorable Charles D. Nottingham, Chairman - STB

The Honorable Ann K. Quinlan, Acting Secretary

Office of the Chairman and Secretary

Surface Transportation Board

395 - E Street, SW.

Washington, DC 20024

**EMERGENCY FAX FILING: 202-245-0461 / -0464 / -0465**

**RE: Docket No. AB-33 (SUB-NO. 230X)**

### Motion to Strike

Union Pacific Railroad Company

-- ABANDONMENT EXEMPTION --

Dear Secretary Quinlan:

The instant Motion to Strike, refers to the Union Pacific Railroad Company Abandonment Exemption: Docket No. AB-33 (SUB-NO:230X), and specifically the [Reply] filed by UP on October 7<sup>th</sup>, 2008; to the Appeal timely filed by NCR on September 29<sup>th</sup> 2008.

Despite assertions by Union Pacific Railroad filed with the Board on August 15<sup>th</sup>, 2008, April 11<sup>th</sup>, 2008, as well as a previous Supplemental Filing, (the provision of which NCR conditionally stipulates) Dated April 4<sup>th</sup>, 2008, the Data which NCR requested for production from Union Pacific Railroad Company ("UP"), pursuant to: 49 C.F.R. 1152.27(a), has Not yet been received by NCR at its previously identified Administrative Office located at: 4959 - Talbot Lane, Unit: # 69, Reno, NV 89509, nor to the current NCR Executive Field Office at: 9084 - East Arbab Court, Tucson, Arizona, 85747, as of: Today, October 27<sup>th</sup>, 2008. Please find and immediately grant the instant MOTION TO STRIKE the knowingly defective and fraudulent UP Reply of October 7<sup>th</sup>, 2008, in its entirety. A hard copy of this Motion is also enclosed via USPS, to permit circulation of same to the Board and Staff. Please feel free to contact me personally if You have any Questions or Comments.

Very truly yours,

Robert Alan Kemp (776) 287-3681 rnk@aol.com

D/B/A: NEVADA CENTRAL RAILROAD

Enclosures Motion to Strike, Certification of Service

cc: Mr. John T. Digilio, Jr., Vice Chairman - Director/President, Nevada Central Railroad, Corporation

Mr. Joseph Anthony McNulty, III - Director/Vice President, Nevada Central Railroad, Corporation

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB - DOCKET NO: AB-33 (SUB-NO. 230X)**

**Union Pacific Railroad Company  
-- ABANDONMENT EXEMPTION --  
IN LASSEN COUNTY, CALIFORNIA AND WASHOE COUNTY, NEVADA  
(FLANIGAN INDUSTRIAL LEAD)  
(SUSANVILLE INDUSTRIAL LEAD)**

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**MOTION TO STRIKE**

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**- NEVADA CENTRAL RAILROAD -  
(FACTUAL BACKGROUND AND SUMMARY OF RELIEF REQUESTED)**

**STATEMENT OF FACTS**

1. NEVADA CENTRAL RAILROAD hereafter ("NCR") is in the process of constructing the (NCR-ByPass-™), over the right of way previously identified and lawfully established for Construction and Operation by Nevada Central Railroad with the Surface Transportation Board on July 14<sup>th</sup>, 2003 identified and referenced to the Surface Transportation Board, hereafter ("STB" or the "Board"), and the STB Section of Environmental Analysis, hereafter ("SEA"), referenced under Finance Docket No. 34382. The lines described herein for Abandonment, directly connect to the (NCR-By-Pass-™. PHASE-1 Construction Project, specifically the NCR North-West Fork), as further described as background information within the NCR Notice of Operation and Acquisition to the Board within STB Docket Number: 34773, and as described personally to the STB Director of Section of Environmental Analysis; Victoria Rutson and here staff, both Orally, with Documented

**Legal Description, as well as with Mapping, and again herein by description as the [NCR: North-West Fork] which starts near Tonopah, NV, and runs in a North/North-West Direction to Mina on the (Historic previously Abandoned SP-Mina Route), then to Hawthorne, continuing North/North-West to Wadsworth, and then to the Flanigan connection with the UP, running Appx: 6-Miles in Nevada and then crossing Appx: 16-Miles over the California/Nevada Border directly to Wendell, California, finally linking to the historic Susanville Industrial Lead and the historic Modoc Route. NCR will execute the Commercial Transportation of either processed and or unprocessed Raw Material as either Liquid, Gaseous, or Solid (state's) of Fuel, and or Additives and Related Materials for the Generation of Electrical Power necessary to support the Maintenance and Operation of Heavy High Speed Mainline Railroad Operations within the State of Nevada, with Future Extensions into California, Oregon, Washington State, and (Canada), as well as to the Southwest in Arizona, New Mexico, Texas, and (Mexico). Moreover NCR will eventually operate the subject 22-Mile lines in Washoe County, NV, as well as in Lassen County, CA, as a virtual: Pollution-less Heavy High Speed Mainline Railroad System.**

**2. Union Pacific Railroad along with RTI and Attorneys Heffner and Kahn, proceed over a year ago to establish an Unlawful Artifice by which UP could manufacture the basis of its subsequent actions to Terminate the Provision and Access of Information to NCR in direct violation of: [49-C.F.R., 1152.27(a)], for more than a Year from the time that NCR contacted UP by telephone at its offices in both Chicago, IL, as well as Omaha, NE. UP further stated that it would NOT DEAL with NCR in any way, and that UP could in essence and as such would in fact in the instant case; Circumvent the Authority of the Board and execute a Direct Sale of the Subject Lines described herein for abandonment to RTI, even though UP has just recently clearly admitted to the Board in effect that: RTI Never Intended to Operate the Line as Common Carrier executing Interstate Commerce. Further admissions by UP directly to NCR-Staff, include a detailed description of the confirmed operative intent of RTI to Salvage the Entire 22-Mile Line from Flanigan, NV, to Wendel, CA. in direct contravention of the Intent for which the STB instituted and authorized the current OFA process as a means to preserve a federally active line of rail, as well as the basis upon which UP documented, as the predicate basis upon which this abandonment was filed as a means to BARR NCR from executing interstate commerce, as a Railroad Company. Moreover, NCR-Staff**

have already confirmed that RTI did (NOT AT ANY TIME Offer, Nor Negotiate, with Any Potential Customer located along the lines described herein, including but not limited to the HL-Power Company, in order to connect to and commence the execution of Interstate Commerce by Rail. Bottom Line, is that the RTI OFA was a Complete Artifice manufactured by UP with Smoke and Mirrors, as a means to Criminally Defraud NCR for over a year, from obtaining a Certificate of Public Convenience and Necessity as a Nevada State Based Rail Carrier, in order to enable UP the necessary time to Maintain and Execute its Secret Covenant and Conspiracy with individuals employed within the U.S. Department of Energy, along with Director of Section of Environmental Analysis Victoria Rutson and her assistant David Navecky, to RIG and thus STEAL as defined within, but not limited to the: Federal RICO Act, as well as the Federal Industrial Economic Espionage Act, [the NCR-ByPass-™. Legally Defined within FD: 34382], from NCR and its Shareholders.

3. Most recently on October 7<sup>th</sup>, 2008 UP filed a **REPLY** that knowingly contained False, Defective and Misleading Information with Criminal Intent to Destroy NCR, and directly damage the shareholders of the NEVADA CENTAL RAILROAD, CORPORATION, as well as the AVIATION TECHNOLOGIES LTD., CORPORATION. Therefore, Petitioner in the name of NCR now files the following information to the Board supporting the instant MOTION TO STRIKE the October 7<sup>th</sup>, REPLY filed by UP to the Appeal timely filed by Petitioner on September 29<sup>th</sup>, 2008.

### **REQUEST FOR RELIEF**

4. UP knowingly deceives the Board with its Statement in the Paragraph identified as Line (" 1. ") when it states and I quote: "The Director properly determined that Mr. Kemp's OFA was not likely to result in continued rail service."

4-A. UP goes on to state and I quote: "A 220 foot rail line segment (less than the length of five boxcars), is plainly insufficient to provide rail service, see No. AB-409 (Sub-No. 5X)." UP already knows that the Los Angeles case has absolutely No Bearing what so ever on the instant 220-Foot line of rail that NCR seeks to acquire within the OFA process and decision now on Appeal, as the NCR line in North-West Nevada is NOT PHYSICALLY CONSTRAINED and as such is NOT LAND

**LOCKED** precisely as previously stated within Petitioners September 29<sup>th</sup>, 2008 Appeal to the Board. Moreover, UP is absolutely aware of the 1999 United Transportation Union - Vs - STB decision in the 7<sup>th</sup>. U.S. Court Of Appeals concerning EFFINGHAM, wherein the Federal Appeals Court factually determined from both a Legal and Operational Standpoint, that the Appx: 200-Foot line of rail acquired in the STB EFFINGHAM docket constitutes a sufficient rail line necessary to institute the execution of Interstate Commerce by Rail, and further in that same decision that said initial Appx: 200-Foot rail line was both Legally and Operationally Sufficient to constitute a MAIN LINE of Rail for the NCR, that could just as stated within NCR's Appeal of September 29<sup>th</sup>, 2008, be Extended for any length in order to reach an existing or potential Rail Served Customer as is precisely the case as outlined within the NCR Appeal. UP goes on to further state within the same paragraph and I quote: "Mr. Kemp appears to acknowledge this by claiming he could add track parallel to the line segment and a "main line extension." UP failed to mention that No Permit is required for the parallel tracks that can be constructed Adjacent to the Main Line to enable NCR to operate the 220-Foot Mainline Track as an Intermodal Transfer Facility, in addition to servicing the Power Generating Corporation co-locating on the existing Right of Way that will provide both DC Electrical Power necessary to operate the new NCR Mainline, as well as the resale of AC Power for public consumption based on the utilization of virtual Near Pollution less Fuel Sourcing as a critical requirement of: U.S. National Security. NCR clearly described its specific intent when necessary to Add a Main Line Extension in the form of a "TURN OUT," within the scope of its described operation of the 220-Foot rail line, and not as a prerequisite to the operation of same to the Power Generating Facility. The Turn Out only relates to the secondary utilization of the 220-Foot of Main Line as an Intermodal Transfer Point for Rail to Truck Trans-load Operations. The Power Generating Facility will NOT require any Switching Operations within the 220-Foot Rail Line, and only when the Generating Plant is Expanded in Generating Capacity will the Parallel Tracks need to be constructed, with said Parallel Tracks to be financed by the Generating Corporation. Bottom Line, is that the statements contained within Paragraph 1-A. Are wholly inaccurate relating to any factual deficiency by NCR to execute the Operation of Interstate Commerce by Rail within and or On the 220-Foot Line of Rail. UP also states and I quote in part: "there is. In fact, nothing (including potential customers) along it," when UP has already been

notified by NCR that there is an existing contract with a Power Generating Customer who will Co-Locate its Power Generating Facility directly adjacent to the 220-Foot Rail Line being acquired by Petitioner within the scope of the OFA Process/Appeal. NCR is waiting to receive a Notice from the Board of the Boards decision to require the submission by Petitioner of the provision of Additional Information necessary to substantiate further, previously documented information beyond the more than sufficient proof already provided by Petitioner, of Petitioners Potential Business and or Customers to Co-Locate with Petitioner adjacent to the 220-Foot line of rail pending receipt from the Board of a Protective Order, to ensure that UP does NOT CONTINUE to take actions, including, but not limited to, those actions to De-Fraud the shareholders of both the AVIATION TECHNOLOGIES LTD., Corporation, as well as the shareholders of the NEVADA CENTRAL RAILROAD, Corporation, and or Interfere with Contract and or Business Expectancy. See the Attached Cover Sheet of Petitioners Bill of Charges within Plaintiffs Second Amended Complaint wherein Petitioner/Plaintiff is NOW proceeding to Charge the Union Pacific Railroad Company in U.S. Federal District Court in Reno, NV, CASE: 3.07 - CV - 00567.

4-B. UP in Paragraph (1-B) states in part, and I quote: "Mr. Kemp did not identify any legitimate rail traffic prospects in his OFA, and does not do so in his appeal." Nothing could be further from the truth. Petitioner clearly identified the fact that Petitioner is ALREADY in the process of LAWFULLY CONDEMNING the Entire HL-Power Plant, and as a New Owner or Contractual Party to the New Owners of same, will in fact execute the critical delivery of Fuel to said 33-Megawatt Power Plant. In addition, NCR has already obtained a Letter of Intent from the Owner/Managers of the HL-Power Plant for the provision of Rail Service Delivered FUEL Products. See Attached Letter from HL-Power dated April 25<sup>th</sup>, 2008. UP is factually engaged in the execution of a Criminal/Civil Fraud of both the Board as well as ATL/NCR Shareholders and will answer for same within the scope of pending litigation in U.S. Federal District Court. UP goes on in specific detail to in a DESPERATE FUTILE attempt to knowingly and unlawfully persuade the Board that Petitioner/NCR, has No Additional Business beyond the New Power Plant to be Co-Located adjacent to the 220-Foot Line of Rail, as well as the HL-Power Plant located Appx: 22-Miles to the North of the initial 220-Foot NCR Main Line. Nothing could be further from the truth. NCR will provide to the Board if necessary, within the scope of the current Appeal, further

**Documented Information, to include but not be limited to Legally Qualified Commercial Contracts and Rail (Will-Serve) Letters for the execution of Interstate Commerce on or adjacent to the 220-Foot Main Line, as well as on Extensions to Same within 10-Days following receipt of a Protective Order from the Board. Finally in relation to Section (1) of the UP Reply. NCR already possess's a Contract for the Provision and Re-Construction of the Subject 21+ Mile Rail Line Extension to the initial 220-Foot Mail Line Rail System, back to the town of: Wendal, CA, to include the installation of: 155-LB. Custom Head Hardened Continuous Welded Rail at NO COST TO NCR. After UP initiated the Fraudulent Contract with RTI Appx: 2-Years Ago as a means to BLOCK and thus BARR NCR from the execution of Interstate Commerce by Rail, NCR had no other alternative then to plan for the partial acquisition of the line and simply lawfully Re-Construct the Appx: 22-Mile Line from Flanigan to Wendal, CA. Moreover, acquiring \$ 3+Million-USD., in Self Described Salvage Light Rail from UP, is literally Insane, when NCR can at No-Cost, Re-Construct the entire 22-Mile Rail System constituting the basis of its HIGH SPEED HEAVY "TEST TRACK" contemporaneously existing as an FRA Certified 155-LB. 85-MPH., conventional Main Line Rail System. Petitioner/Plaintiff will simply proceed in U.S. Federal District Court to obtain relief necessary to stop the Biggest Fraud since the institution of construction of the Transcontinental Railroad, by charging UP, specific STB-Staff, and the Department of Energy with multiple known acts of Fraud and Interference as a means to STEAL as defined within, but not limited to the: Federal RICO Act, as well as the Federal Industrial Economic Espionage Act, [the NCR-ByPass-™. Legally Defined within FD: 34382], from NCR and its Shareholders, and for such Act's further existing as a Critical Breach of U.S. National Security, damaging the United States Government and its People.**

**5. Based on the Foregoing, Petitioner now requests the that UP Reply of October 7<sup>th</sup>, 2008 be Stricken in its Entirety from these proceedings, as the entire Document is essentially Criminally Motivated and is a Total Distortion of Facts, and is Clearly Knowingly Defective, and False.**

**Respectfully Filed,**

**Robert Alan Kemp, D/B/A. NEVADA CENTRAL RAILROAD**

**(775) 287-3681 ncmv@aol.com**

Robert Alan Kemp  
 4959 - Talbot Lane  
 Unit: #69  
 Reno, NV 89509  
 (775) 287 - 3681

**In the United States District Court  
 for the District of Nevada**

**ROBERT ALAN KEMP - D.B.A.:**

**NEVADA CENTRAL RAILROAD**

**Plaintiff**

**vs.**

**CITY OF ELY; WHITE PINE COUNTY;  
 WHITE PINE HISTORICAL RAILROAD  
 FOUNDATION; EASTERN NEVADA  
 ECONOMIC DEVELOPMENT  
 AUTHORITY, INC; CITY OF LOS  
 ANGELES; LOS ANGELES DEPARTMENT  
 OF WATER AND POWER; WHITE PINE  
 ENERGY ASSOCIATES, LLC; SIERRA  
 PACIFIC RESOURCES; SIERRA PACIFIC  
 POWER COMPANY; V & S RAILWAY;  
 RICHARD SEARS and JANE DOE SEARS,  
 husband and wife; VICTORIA RUTSON and  
 JOHN DOE RUTSON, husband and wife;  
 DAVID NAVECKY and JANE DOE  
 NAVECKY, husband and wife; GARY D.  
 FAIRMAN and JANE DOE FAIRMAN,  
 husband and wife; CHRISTOPHER  
 BURGER AND JANE DOE BURGER,  
 husband and wife; GENERAL ELECTRIC  
 CORPORATION; UNION PACIFIC  
 RAILROAD COMPANY; STATE OF  
 NEVADA; and DOES 1 through 50; and  
 RGE Corporations 1 through 30.**

**Defendants**

No. 3.07 - CV - 00567  
 (Hon. Brian E. Sandoval)

**SECOND AMENDED  
 COMPLAINT**

**BREACH OF UNITED STATES  
 CONSTITUTION ARTICLE. VI.  
 UNLAWFUL INTERFERENCE WITH  
 EXCLUSIVE FEDERAL  
 JURISDICTION AND COMPLETE  
 FEDERAL PREEMPTIVE  
 REGULATORY AUTHORITY BY STB  
 OF INTERSTATE COMMERCE BY  
 RAIL [49 U.S.C. 10101 & 10901]  
 FRAUD - INDUSTRIAL ECONOMIC  
 ESPIONAGE THEFT OF TRADE SECRETS,  
 FRAUD - CONSPIRACY,  
 FRAUD - BREACH OF CONTRACT,  
 FRAUD - FRAUDULENT INDUCEMENT,  
 FRAUD - BREACH OF THE COVENANT  
 OF GOOD FAITH AND FAIR DEALING,  
 FRAUD - INTERFERENCE WITH  
 CONTRACT FOR EXECUTION OF  
 INTERSTATE COMMERCE AND OR  
 BUSINESS EXPECTANCY,  
 FRAUD - UNLAWFUL PROSECUTION,  
 DECLARATORY JUDGEMENT**



## HL Power Company

732-025 Wendel Rd.  
Wendel, CA 96136-9707  
Tel (530) 254-6161  
Fax (530) 254-6130

April 25, 2008

Nevada Central Railroad  
c/o: Aviation Technologies LTD  
Robert Alan Kemp, representing: NCR  
4959 - Talbot Lane, Unit: # 69  
Reno, NV 89509

RE: RAIL SERVICE REQUEST TO HL POWER COMPANY PLANT  
MODOC RAIL LINE

Dear Mr Kemp:

HL Power Company owns and operates a 34-megawatt combined biomass and geothermal power plant at Wendel, California. The plant is in its nineteenth year of operation, and delivers bulk electric power to Pacific Gas & Electric Company under a long-term agreement.

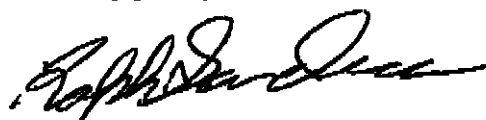
We understand that Union Pacific Railroad intends to abandon the remaining section of its Modoc rail line between Flanigan NV and Wendel CA, and has filed a request to do so with the federal Surface Transportation Board. You have indicated that Nevada Central Railroad is in the process of purchasing the track and right-of-way of the remaining portion of the Modoc Line between Flanigan NV and Wendel CA. We are very interested in the potential business opportunities, which you have described, which may become available to HL Power Company under NCR's ownership of the Line.

HL Power Company has purchased and has stored on site the rail, ties, splice bars, bolts, spikes, and one switch that we anticipate using to make the connection from the plant to the existing Modoc line, if the line is kept in place and the purchaser of the line has the ability and desire to deliver rail car service to the HL Power Company plant..

HL Power believes that retention of the Line would be very beneficial to Lassen County and to HL Power company's continued operation, and for the development of other industry in the Wendel area that would need rail service. We have long contemplated using rail transportation to deliver a portion of our 350,000-tons-per-year biomass fuel requirement. Access to rail could expand our supply perimeter significantly and add efficiency to our fuel procurement program. We would be very interested in exploring a long-term business relationship with Nevada Central should it become the owner of the Modoc Line.

I have included a letter from Western Energy Resources along with other documents that express their need and desire for service on the existing rail line for a gravel and sand quarry operation in the Wendel area.

Sincerely yours,



Ralph A. Sanders  
Plant Manager

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# AVIATION TECHNOLOGIES LTD.

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Aviation Technologies Ltd, "ATL" PRINCIPAL PLACE OF BUSINESS TONOPAH AIRPORT, NYE COUNTY, NEVADA

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**Robert Alan Kemp**

[ D/B/A: ]

## NEVADA CENTRAL RAILROAD

**VIA - USPS and Emergency Fax Filing**

(Monday), October 27, 2008

The Honorable Charles D. Nottingham, Chairman - STB.

The Honorable Ann K. Quinlan, Acting Secretary

Office of the Chairman and Secretary

Surface Transportation Board

395 - E Street, SW.

Washington, DC, 20024

**EMERGENCY FAX FILING: 202-245- 0461 / - 0464 / -0465**

**RE: Docket No. AB-33 (SUB-NO. 230X)**

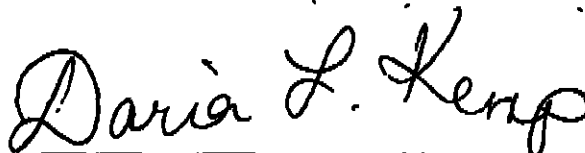
### **Motion to Strike**

**Union Pacific Railroad Company**

-- ABANDONMENT EXEMPTION --

### **CERTIFICATE OF SERVICE**

I, Daria Lynne Kemp certify that on this 27<sup>th</sup> day of October, 2008, that I made service of the attached original NCR **Motion to Strike**, upon the Surface Transportation Board, (STB), and mailed a Single Copy of same to all Parties, Agencies, and Individuals, listed for Service within the Union Pacific Exemption: AB-33 (SUB-NO. 230X), by depositing same into the United States First Class Mail with prepaid postage, and also Directly to the STB via EMERGENCY FAX FILING, and by OVERNIGHT FedEx COURIER to: Surface Transportation Board, 395 - E Street SW, Washington, DC 20024



Daria Lynne Kemp, for:

Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD  
(775) 287- 3681 ncrnv@aol.com